

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Lori A. Dowling,

Complainant,

v.

Jeff Davies,

Respondent.

AMENDED
ORDER OF DISMISSAL

A Dismissal Order was issued in this matter November 30, 2010.

The Notice provision alerting the parties of their right to seek judicial review was inadvertently omitted from the Order.

THEREFORE, in order to correct the omission contained in the Order of Dismissal of November 30, 2010, the Order is amended to include the Notice of appeal provision. No other changes or amendments to the November 30, 2010, Order of Dismissal have been made.

IT IS ORDERED:

That the Complaint of Lori Dowling is DISMISSED and the record closed as of this date.

Dated: December 3, 2010

/s/ Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5, this order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. § § 14.63 to 14.69.

MEMORANDUM

Respondent Ken Braswell is a candidate for Hackensack City Council. On or about October 6, 2008, Mr. Braswell and council member Eugene Franzwa donated a computer to the City of Hackensack for use by the city's sewer and water department.¹ On October 6, 2008, the Hackensack City Council voted in favor of accepting the donation of the computer from Mr. Braswell and Mr. Franzwa. The Complaint alleges that Respondent Braswell's donation of the computer to the city violates Minnesota Statutes § 211B.13.

Minnesota Statutes § 211B.13 provides as follows:

A person who willfully, directly or indirectly, advances, pays, gives, promises, or lends any money, food, liquor, clothing, entertainment, or other thing of monetary value, or who offers, promises, or endeavors to obtain any money, position, appointment, employment, or other valuable consideration, to or for a person, in order to induce a voter to refrain from voting, or to vote in a particular way, at an election, is guilty of a felony. This section does not prevent a candidate from stating publicly preference for or support of another candidate to be voted for at the same primary or election. Refreshments of food or nonalcoholic beverages of nominal value consumed on the premises at a private gathering or public meeting are not prohibited under this section.

Minnesota Statutes § 211B.13 is an anti-bribery statute. It prohibits giving something of monetary value to a *person* in order to induce a voter to vote in a particular way at an election. In this case, a candidate provided something of monetary value (a computer) not to a *person* but to the city. Although not specifically alleged, the Complainant seems to suggest that by making this public donation, the candidate has given something of monetary value to all the city's residents in order to induce voters to vote for him.

Because Minnesota Statutes § 211B.13 is also a criminal statute, violation of which is a felony, the rule of strict construction of penal statutes must be applied, notwithstanding the civil nature of these proceedings.² The key issue in

¹ Hackensack city council meeting minutes and newspaper article attached to Complaint.

² *In the Matter of the Contest of General Election [Graves v. Meland]*, 264 N.W.2d 401, 403 (Minn. 1978).

this case is whether there has been a giving of a “thing of monetary value” to “a person” “in order to induce a voter to refrain from voting or to vote in a particular way” at an election.

The word “person” is not defined in the statute. Following the rule of strict construction, the Administrative Law Judge will not expand its meaning to include local governments or municipalities. Moreover, such an expansive reading would not promote the statute’s purpose. At its heart, the statute is directed against the bribing of voters.³ The donation of property to a governmental entity and not to individuals simply does not constitute the unlawful inducement or bribery sought to be prohibited by Section 211B.13. To suggest that a whole community will be unlawfully influenced to act in a particular manner based on a donation to the city is unreasonable.⁴ Furthermore, the offer of the computer was made at a public city council meeting and voted on by the council members. The residents of the city can draw their own conclusions as to the purpose or nature of the gift.

In addition, the Complaint does not allege any facts to support a claim that Mr. Braswell donated the computer as an inducement to support his candidacy. The Complaint seems to suggest that any donation from a candidate is necessarily related to his election bid. However, such a conclusion overstates the prohibition in section 211B.13. If the Legislature had intended to prohibit all donations from candidates for public office, it would have stated this intent directly. Instead, section 211B.13 is more narrowly drafted, banning only those gifts provided to persons with the intent of inducing voters to refrain from voting or to vote in a particular way.

Because the Complaint fails to allege that the Respondent gave something of monetary value to *a person* in order to induce a voter to vote for him, it does not state a prima facie violation of Minn. Stat. § 211B.13. For these reasons, the Complaint is dismissed.

B.J.H.

³ Cf. *United States v. Garcia*, 719 F.2d 99, 102 (5th Cir. 1983) (under federal statute prohibiting payment for votes, an assessment of the monetary worth of an item should be made from the perspective of a voter receiving the item, not the person offering it).

⁴ See, Op. Atty. Gen. 106-e, April 10, 1995 (offer to provide money and land for relocation of courthouse not a violation of section 211B.13), *citing*, Op. Atty. Gen. 627-B-3, May 6, 1954 (gift of land and money for courthouse construction not a violation of Corrupt Practices Act).